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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/031,609      | 01/22/2002  | Micheal Norman Collins | 0119/0004           | 6548             |

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EXAMINER

EREZO, DARWIN P

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3761

DATE MAILED: 09/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/031,609

Applicant(s)

COLLINS, MICHEAL NORMAN

Examiner

Darwin P. Erez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or  
REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if

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the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 recites the limitation "its" and "it" in lines 2, 3 and 6, which renders the claim vague and indefinite because it is unclear as to what the limitations are referring to.

5. Claim 1 recites the limitation "the patient end" in lines 4 and 5. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 2 recites the limitation "the patient end" in line 1. There is insufficient antecedent basis for this limitation in the claim.

7. Claim 4 recites the limitation "the roof" in line 2. There is insufficient antecedent basis for this limitation in the claim.

8. Claim 6 recites the limitation "the volume" in line 2. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 7 recites the limitation "its" in lines 2 and 3, which renders the claim vague and indefinite because it is unclear as to what the limitation is referring to.

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10. Claim 9 recites the limitation "its" in lines 2 and 3, which renders the claim vague and indefinite because it is unclear as to what the limitation is referring to.

11. Claim 9 recites the limitation "the volume" in line 7. There is insufficient antecedent basis for this limitation in the claim.

12. Claim 10 recites the limitation "the internal volume" in line 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-5, 7, 8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,632,271 to Brain.

15. **As to claim 1**, Brain teaches a laryngeal mask airway including a tubular portion **12** and a mask portion **11** at its patient end having sealing cuff **17** of generally oval shape defining an opening within its center and adapted to seal with patient tissue around the laryngeal inlet, the mask portion defining a recess extending from the opening to the patient end of the tubular portion, characterized in that the patient end of the tubular portion is located above and to the rear of the side of the opening such as to space it away from the epiglottis (See Fig. 1 and 2; member **18** keeps the patient end of the tubular portion away from the epiglottis).

16. **As to claim 2**, Brain teaches the patient end of the tubular portion located substantially midway across the width of the rear side of the sealing cuff.
17. **As to claims 3 and 11**, Brain teaches the tubular portion as a separate tube bonded to the mask portion (see Fig. 2).
18. **As to claim 4**, Brain teaches the longitudinal center line along the internal surface of the roof of the recess as substantially straight (see Fig. 2; the part of mask portion **11** that is adjacent tube **25**).
19. **As to claim 5**, Brain teaches the recess having a height (22.5 mm, as seen in Fig. 2, the bottom of **C** to the top of the collar that receives the tubular portion) that is approximately 3.2 the internal diameter (7 mm) of the tubular portion.
20. **As to claims 7 and 8**, Brain teaches a laryngeal mask airway including a tubular portion **12** and a mask portion **11** at its patient end having sealing cuff **17** of generally oval shape defining an opening within its center and adapted to seal with patient tissue around the laryngeal inlet, the mask portion defining a recess extending from the opening to the patient end of the tubular portion, characterized in that the height (22.5 mm, as seen in Fig. 2, the bottom of **C** to the top of the collar that receives the tubular portion) of the recess is that is approximately 3.2 the internal diameter (7 mm) of the tubular portion.

***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,632,271 to Brain.

23. **As to claim 6**, Brain is silent with regards to the volume of the recess. However, since Brain teaches an internal diameter and a height (as measured from Fig. 2) that is within the applicant's range, it would have been obvious to one of ordinary skill in the art to have the ratio of the internal diameter of the tubular portion cubed to the volume of the recess to be between 50 and 68 since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

24. **As to claims 9 and 10**, Brain teaches a laryngeal mask airway including a tubular portion **12** and a mask portion **11** at its patient end having sealing cuff **17** of generally oval shape defining an opening within its center and adapted to seal with patient tissue around the laryngeal inlet, the mask portion defining a recess extending from the opening to the patient end of the tubular portion. Brain is silent with regards to the volume of the recess. However, since Brain teaches an internal diameter and a height (as measured from Fig. 2) that is within the applicant's range, it would have been obvious to one of ordinary skill in the art to have the ratio of the internal diameter of the tubular portion cubed to the volume of the recess to be between 50 and 68 (or 50-60) since it has been held that where the general conditions of a claim are disclosed in the

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prior art, discovering the optimum workable ranges involves only routine skill in the art.

*In re Aller*, 105 USPQ 233.

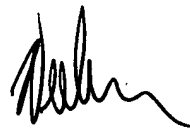
**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erez who's telephone number is (703) 605-0420. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

dpe



WEILUN LO  
SUPERVISORY PATENT EXAMINER  
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